UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, MICHIGAN,	.	Docket No. 13-53846
	.	Detroit, Michigan
	.	October 16, 2013
Debtor.	.	10:00 a.m.
. . . . .		

HEARING RE. OBJECTIONS TO ELIGIBILITY TO CHAPTER 9 PETITION
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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THE CLERK: All rise. Court is in session. Please be seated. Case Number 13-53846, City of Detroit, Michigan.

THE COURT: Good morning, everybody.

ATTORNEYS: Good morning, your Honor.

THE COURT: Okay. Who's up?

MS. NELSON: Good morning, your Honor. Assistant Attorney General Margaret Nelson on behalf of the State of Michigan in response to the objections that are currently pending legal issues before the Court. Before I begin, if I may approach, I would like to present the Court with two cases -- well, actually an order and a case decision that I will be referring to later in my arguments --

THE COURT: Okay.

MS. NELSON: -- the state's rebuttal or response to arguments that were raised yesterday. The state's focus with respect to the legal objections raised to the City of Detroit's eligibility focused principally on the constitutionality of Public Act 436 and the lawfulness of the governor's authorization thereunder to the city and the emergency manager to proceed in bankruptcy under Chapter 9. The objectors essentially identified four principal bases for contending that Public Act 436 is unconstitutional. The first is in the context of Section 18(1) when they allege that it fails to protect public pensions from inclusion in the bankruptcy proceedings initiated by the local government

as authorized by the state. Second, they allege that Public Act 436 violates the home rule provisions of Michigan's Constitution under Article VII. Third, they allege that 436 improperly delegates authority to the emergency manager and thereby violates the separation of powers provisions within Michigan's Constitution. And, fourth, they argue that Public Act 436 lacks adequate standards to guide the emergency manager's actions in bankruptcy, thereby creating, I'm assuming, a due process violation, although they aren't specifically clear with respect to that. Principally, the arguments presented yesterday addressed Sections 18(1), and that will essentially be the focus of my response this morning, your Honor.

THE COURT: Excuse me for just one second. I meant to say this at the beginning of our session here this morning. Ms. Levine, due to time constraints, you did not address your home rule argument yesterday. I hope you'll give that a priority when you do get the microphone again.

MS. NELSON: Thank you, your Honor. In addressing the constitutionality of this provision and, in fact, the overall statute -- state statute itself, the Court must be guided by specific principles of state law in addressing constitutionality of statutes. First -- the first principle that the Court must be guided by is that statutes are presumed to be constitutional, and courts have a duty to

construe a statute as constitutional unless its unconstitutionality is clearly apparent on its face, and for that proposition, your Honor, I cite you to a case relied on by principally all of the objectors, and it's also cited by the City of Detroit, In re. Request for Advisory Opinion of the Constitutionality of 2011 Public Act 238, and that's found at 490 Mich. 295.

THE COURT: Of course, that's not exactly the standard when the challenge is that the law was enacted in some unconstitutional manner.

MS. NELSON: Correct, your Honor, and that's the next principle.

THE COURT: Okay.

MS. NELSON: So when you're construing the statute itself in a facial challenge to the statute which is presented here initially, the unconstitutionality must first be apparent on its face. And the reason the In re. Request opinion is so significant is because it is a direct analysis of the very constitutional provision that's at issue here, and it directs the Court to the second principle of construction that's applicable to this analysis, and that is the principle of construction given to constitutional provisions under Michigan law. The objective in reviewing a constitutional provision is to effectuate the intent of the ratifiers who adopted the constitution, not the drafters but

the ratifiers. And the lodestar principle, for purposes of this review, is that of common understanding, so, in other words, the Court must determine the common understanding of the terms and give sense to the words used that would have been most obvious to those who voted to adopt that particular constitutional provision. That, again, is emphasized in the In re. Advisory Opinion with respect to 2011 Public Act 38 at page 308. And it's significant here, your Honor, for two purposes, for the two reasons that are essential to the analysis here. The Michigan Supreme Court has already done this principle analysis in the context of Article IX, Section 24, with respect to the impairment of pensions and squarely addresses the issue that the objectors have been arguing to this Court is created or is significant here. In this advisory opinion, the Michigan Supreme Court concluded that Article IX, Section 24, does essentially four things. It was the obvious intent of the provision to ensure public pensions be treated as contractual obligations that once earned could not be diminished. There's no question of that. Second, the provision is designed to say that when an employee benefit comes due, a pension -- when the employee's pension benefit comes due, he or she has a contractual right to receive it. Third, the accrued financial benefit of a pension is the pension income itself, and, fourth, diminishing or impairing the accrued financial benefit means the actual reduction of

pension income. In other words, the loss -- the actual loss of pension income is the impairment. That's significant to the issue raised by the objectors in the context of the facial challenge to 436 and as this Court has addressed questions on yesterday. Clearly 18(1) of 436 does not on its face cause or commit an actual reduction of pension income, and that is the definition, and that is the application of impairment this Court must apply because that is the determination of the Michigan Supreme Court's common understanding of impairment or diminishment in the context of Article IX, Section 24.

So what does that mean to this discussion? Going back to the statutory interpretation principles, the Court must look at the language of the statute and determine if it's ambiguous or not, the clear meaning, and construe it in a way that gives meaning to the legislature's intent. Here the legislature clearly did not intend to impair public pensions through the use of the bankruptcy process in terms of its authorization. So 18(1), by authorizing the bankruptcy filing or authorizing the government to -- or the governor to authorize the bankruptcy filing and ultimately making that filing does not commit an impairment because it does not cause an actual diminishment in pension benefits as defined by the Michigan Supreme Court. So on its face, 436 is constitutional and in accord with Article IX, Section 24.

Need there be any further discussion with respect to that? Actually not. And there is additional case law, your Honor, that's cited within that advisory opinion which confirms that. The Court relies very heavily on the Studier versus Michigan Public School Retirement Board case from a few years prior to that, and I have the cite for the Court if it cares for that because essentially the same analysis was done in that case. Studier is found at 472 Mich. 642, and the discussion of the interpretation of Article IX, Section 24, begins at page 6 -- let me make sure I have the right page here -- 656, so it's consistent. And, in fact, that court, the Studier court, criticizes Musselman and the analysis made in the Musselman decisions as to what the intent of the drafters and the ratifiers was in the context of adopting Article IX, Section 24.

So with respect to that first issue on which the constitutionality of 436 hinges in terms of the arguments raised by the objector, the Michigan Supreme Court has addressed that. This Court is obligated to apply the definition of Article IX, Section 24, identified and applied by the Michigan Supreme Court, and so in that context, Section 18, Sub 1, does not impair -- actually impair and, therefore, does not violate Article IX, Section 24, by failing to carve out any protections for those pensions.

Similar analysis is required then of the

authorization provided by the governor. As we've argued, as the Court has noted, essentially in the context of the ripeness arguments that have been made and the questions that it has been asked, the authorization clearly applying that application made by the Michigan Supreme Court does not cause an actual impairment of pension benefits. Doesn't matter what the intent might be. Doesn't matter if the governor chose not to impose contingencies. In order for the legal process to operate in the context of the Bankruptcy Code, as this Court noted, there is no actual impairment worked or caused by the authorization; therefore, the authorization is in total compliance with Article IX, Section 24, and allows this matter to proceed through the appropriate legal processes established under the Bankruptcy Code.

With respect to the home rules provisions analysis, your Honor, Article VII, Section 22, of Michigan's Constitution recognizes that there are obligations and responsibilities imposed on local governments separate and apart from the state; however, the constitutional provision also recognizes that these duties, obligations, responsibilities, and authorities of the local governments are subject to the control and change by state law. Very clearly, this constitutional limitation on the powers and authorities of municipalities has been recognized in legislation, specifically the Home Rule Act, which we cite in

our brief, at MCL 171.1 et seq. and particularly at Section MCL 117.36, which is -- which essentially codifies the limitations of Article VII, Section 22.

What the objectors' argument fails to recognize is, first, local governments are not sovereign. Second, they are creatures of the state. Third, the federal government and the federal courts have long recognized those limitations on local governments, and, fourth, they are subject to control by the state legislature in that the state may change the laws, authorities, powers of local governments at any given time. And the federal courts have consistently recognized that most recently in the Sailors decision that's cited in our brief, which is exactly what has occurred here. Because the local governments derive their power and authority from the state and are, in fact, creatures of the state, the state has the power to change that authority and to change the course, the shape, and the force and authority of their governments. This statute, Public Act 436, is just such a law, and it has that purpose.

THE COURT: Well, but to what extent are the home rule powers of a city derived from the Michigan Constitution as opposed to statute?

MS. NELSON: The Michigan Constitution has limited recognition of home rule authority, and in the language of Article VII, Section 22, it recognizes that all resolutions

and ordinances of the local governments are subject to the Constitution and laws of the state, so, in other words, case law has recognized, as does the codification of these limitations in the Constitution, that the legislature may impact and affect any municipality's ordinances, any municipality's laws, forms of government, funding, or any other aspect of authority granted it directly from the state, so to the extent that 436 has the purpose of addressing emergency financial crises in local communities, that is exactly the type and purpose of the law recognized under Article VII, Section 22, an authority that is given to the legislature over its local communities.

THE COURT: So is there any limitation in the Michigan Constitution on the legislature's power and authority to control the form of government for the City of Detroit?

MS. NELSON: In the form of adopting their charter provisions, yes. The city can in its charter, which is then submitted to the voters for approval, identify its form of government, how its officials will be elected, and allocate the power and authority granted to those officials through the Constitution and the laws of the State of Michigan, and that's what has occurred. However, the legislature retains authority through the Home Rule Act to even alter or amend ordinances and charter provisions; in other words, the

legislature can pass a law that in its application and effect would render a charter provision or a city ordinance unconstitutional. For example, with respect to taxation, the state can cap the amount of tax -- or the level of taxation that a community might be able to impose, mills or things like that. If a charter provision had been adopted that established a higher level, it would be subordinate to the state law, so in the same -- in that context, because the legislature retains authority under Article II to promulgate legislation and does not commit to any specific type or form or purpose of legislation with respect to cities, that can change. It recognizes the legislature's continuing authority to change the law and the effect that those changes in law will have on the operations of its local communities vis-a-vis its ordinances and its charters. So the two, yes, work in tandem. The communities do have the authority to identify their forms of government, how their officials will be elected, and how that will be implemented, but at the same time, the legislature, for example, controls the election laws, identifies how elections will be handled, taxation.

THE COURT: But the question the objection raises here is doesn't the state's appointment and imposition of an emergency manager on the City of Detroit change its form of government by abrogating the powers of the City Council and the mayor to the emergency manager?

MS. NELSON: Absolutely, it does, and the legislature clearly, as we've identified in our brief, has the authority to do that under both the Home Rule Cities Act and under the various provisions of the Constitution that control forms of government and the authority of the state over its local communities. The local communities --

THE COURT: So is it too simplistic to say that the city sets its own form of government through its charter unless the state dictates otherwise through its legislation?

MS. NELSON: Absolutely, and that's the whole point of the home rule --

THE COURT: It's not too simplistic --

MS. NELSON: It's not too simplistic.

THE COURT: -- to put it just that way.

MS. NELSON: It's just that way, and it's clear in both the constitutional provision, and it's clear under the Home Rules Cities Act, which implements those limitations that are imposed on local governments vis-a-vis Article VII, Section 22. The federal courts have recognized that as -- and, again, I cite the Court to the Sailors decision from the United States Supreme Court, which recognizes the overarching authority of the state. Because local governments are creatures of the state, the state can determine what it's -- what authority it's going to give, what its local officials will look like, what its forms of government will look like.

Second, I would also point out, your Honor, that this is essentially a temporary situation, so this isn't the state dictating that this is how the city is going to be operating forever. There are limits on this, and there are authorities in Public -- authority in Public Act 436 given to the local officials to petition the state to remove the emergency manager, so there is --

THE COURT: Right, but none of that is constitutionally required. If I understand you correctly, the legislation could say the governor picks the mayor of the City of Detroit.

MS. NELSON: Well, potentially it could, yes, but it doesn't. It doesn't have to. They chose not to.

THE COURT: So but bottom line, your position is that in no sense is the city charter supreme or preemptive over state legislation.

MS. NELSON: Absolutely not, or over the state's Constitution. In fact, it's the reverse, and that's very clearly the relationship established in Article VII, Section 22, and in the Home Rules Act statute itself that codifies those provisions.

The next challenge -- and I might also point out, as we did in our brief, your Honor, there is a parallel example in the Home Rule Village Act itself which does essentially the same thing, so we're not just talking about cities, but

we're talking about all local governments. The Home Rule Cities Act, the Home Rule Village Act, all operate in the same way. Now, the forms of government where there might be some differences are principally townships and school districts, although they, too, are creatures of the state. While the Court -- or the -- I'm sorry -- while the legislature gives them some different authorities, it still gives them those authorities and those powers in the same way that it does its cities and villages and other local forms of government.

The objectors also challenge the constitutionality of 436 with respect to Article VII, Section 21, and Section 34. Section 21 is a taxation essentially provision, and it limits the authority of local governments to tax, borrow money, and contract debts, so this is another example of the authority that the state exercises over its local communities. 436 recognizes and imposes these same limitations on the emergency manager that the law imposes on its public officials who are operating their local governments, and it provides the state oversight and control of these matters in the same way that it does its local government officials, especially when they are under a financial emergency. So, in effect, 436 treats the emergency manager no differently than it does local officials in the context of the local government's authority to tax, to borrow

money, or to contract debts, so there is no unconstitutional actions at work here merely because the emergency manager is now the one operating the city making those decisions as opposed to the elected officials.

Similarly, Article VII, Section 34, merely establishes the standard for interpreting the authority granted by Constitution and state law, so, in other words, it says the Michigan legislature retains authority to define and modify the powers, duties, and obligations of its local governments, which are derived from the state in the first instance. It says that those powers given to the local governments must be construed with deference to the local government, but it still recognizes that those powers come from the state, from the legislature, and can be changed in any instance where the legislature believes that it's appropriate to do so.

Finally, your Honor, as we've argued in our brief -- and there were no arguments presented to the Court yesterday -- 436 is not an unconstitutional delegation of authority under Article III, Section 2. It's not delegating legislative power to the emergency manager. It allows the emergency manager to simply execute the same executive powers that the elected officials of the community would have within the context of authority granted it under 436, principally in Section 12(1), which identifies all of the various powers and

authorities. There are controls. There are restraints. There are reviews required, approvals from the treasurer for many of these at the state level or approval from the governor for some of these actions that have to be done, and there are also limitations on the emergency manager's authority to make actions without the approval of the local government, a significant difference between Public Act 4. For example, with respect to the sale of assets or the distribution of assets, the value of the assets will determine the extent to which the local government must also be involved in many of these decisions, so it is not -- and to the extent that the objectors are arguing that there are insufficient standards by which to guide the emergency manager, I would submit the emergency manager is guided by the same standards that would have applied to the local officials when they were exercising that power, and there's no argument from the objectors that those standards applied to and by the local elected officials are inadequate for their exercise of that authority, and those are the standards that guide the emergency manager's actions as well. So not only is this an appropriate delegation of authority by the state under its constitutional and statutory authority and its role in relation to its local governments, it is also sufficient for purposes of guiding the emergency manager's actions both as to -- under the law and in relation to the

oversight provided by the State of Michigan.

Yesterday, your Honor, there was an argument made by Krystal Crittendon with respect to the Court's -- the jurisdiction and the authority essentially of the emergency manager to file this action. I have provided the Court a copy of an order issued by the Michigan Court of Appeals on November 16th, 2012 -- I brought a copy for Ms. Crittendon, but she's not here today -- which squarely resolves that issue. And if I'm understanding her -- following her argument correctly, her argument is that because the emergency manager was appointed under Public Act 72, that that was an improper appointment because the repeal of Public Act 4 did not revive Public Act 72 under the state's repealer statute. That was --

THE COURT: That was part of her argument.

MS. NELSON: Right. That has been an issue, and that's the part that I'm addressing with respect to this order, your Honor. That particular issue has been raised in at least four different cases challenging the appointment of various emergency managers after the suspension of Public Act 4 under the referendum process and subsequently under its rejection. And the order that I have provided to you is in the case of Robert Davis versus Roy Roberts. It's Court of Appeals Docket Number 313297, and it squarely rejects that argument. Quite frankly, this was a quo warranto action, so

it directly attacked the authority of the emergency manager, Roy Roberts, who is the emergency manager for the Detroit Public School System, to hold that position because of his appointment under Public Act 4 and then subsequently under 72. The Court of Appeals indicated the plain language of MCL 8.4, which is the repealer statute, includes no reference to statutes that have been rejected by referendum. The statutory language refers only to statutes subject to repeal, and judicial construction is not permitted here because this language is clearly unambiguous. Accordingly, under the clear terms of the statute, MCL 8.4 does not apply to the voters' rejection of referendum of Public Act 4. Even if the rejection of Public Act 4 is deemed to operate as a repeal subject to 8.4, the voters rejected Public Act 4 in its entirety by way of the referendum, and this, in fact, revived Public Act 72. So I think -- I believe that addresses Ms. Crittendon's objection with respect to jurisdiction, and I just wanted the Court to have that authority for when she submits her supplemental brief.

Finally, your Honor, the other issue that I would like to address relates to the Retired Detroit Police Member Association's argument with respect to the referendum process and the validity of 436 as a result of the referendum process. I first take exception to the representation that an appropriation of $5,780,000 total is an insubstantial or

insignificant appropriation with respect to the state, but I would point out to the Court the argument fails for two principal purposes or reasons. First, Public Act 436 is significantly different than Public Act 4, so Ms. Brimer's argument that it's identical fails on that ground alone, and the very example that she provides in terms of the appropriation is one of the major differences. Public Act 436 imposes the requirement on the State of Michigan to pay the salaries of the emergency managers. Neither Public Act 4 nor Public Act 72 had that requirement. So it, in fact, required an appropriation in order to have -- so that the state agency -- in this case, Treasury -- that's administering that aspect of the statute would be able to make that expenditure. Under state law a state agency must have an appropriation in order to be able to make an expenditure, and that's exactly what happened in this instance. In addition, the $5 million that was appropriated, as was pointed out yesterday, is for the purpose of paying for consultants, attorneys, and others that are going to be assisting the local communities that are in a financial emergency with their restructuring. That was not part of Public Act 4 or Public Act 72 either, so on those two grounds, that is a difference. There are many other substantial and significant differences between these two statutes, but even without any difference, your Honor, the

case that I have handed you, Reynolds versus the Bureau of State Lottery, resolves this issue, and I would point the Court to page 604 and 605 of that opinion. In this case -- although somewhat factually different, in this case a 1994 act that controlled fund-raising abilities of political campaigns to use bingo and other types of gaming to raise monies was being challenged by referendum. There was a challenge to the signature process that went to the Court of Appeals and then back down to the Board of Canvassers. The Board of Canvassers split and didn't certify the statute, so it went back up -- or the referendum -- excuse me -- back up to the Court of Appeals. While that process was in play, the legislature adopted a new act that was identical, word for word identical to the challenged 1994 act, and the governor signed it, and it went into effect. The 1994 act then was ultimately certified on the ballot, went through the referendum and was rejected by the voters. The parties that had moved for that referendum then dismissed their appeal case, applied for a bingo license to raise money, were rejected under the new law, and then brought this challenge, a declaratory challenge, arguing that the new statute was invalid because it violated the referendum process. In addressing that issue, the Court of Appeals analyzed and interpreted the referendum provision, and that is the portion of the opinion that I refer the Court to. It begins at page

604 and continues onto 605. And in there the Court very clearly said the referendum provision and the purpose for the referendum in terms of its definition and use of the term "enacted law" means only the particular law supported by a majority of legislators and signed by the governor and no more. They went on to hold that when a law enacted by the legislature is referred to the people, the reference to a particular definite act and not by implication the general principle or subject matter at issue. So, in other words, it is the act itself, not the general purpose or the particular purpose of the act, that is subject to the referendum. And because it is the specific act that is the subject of the referendum, the legislature is not precluded from subsequently adopting a new law that is either identical to or dealing with the same subject matter or purpose. The Court continued, "nothing in the Michigan Constitution suggests that the referendum had a broader effect than nullification of the 1994 Public Act 118," the act at issue in that case. We cannot read into our Constitution a general preemption of the field that would prevent further legislative action on the issues raised by the referendum. The legislature remained in full possession of all its other ordinary constitutional powers, including legislative power over the subject matter addressed in 1994 Public Act 118.

THE COURT: Well, how do you or how does this case

deal with the argument that that kind of very strict interpretation of the referendum power of the people makes a mockery of it?

MS. NELSON: I disagree that it makes a mockery of it, your Honor, because prior to this analysis, the Court of Appeals went through the very same review and applied the very same review standards in terms of the common understanding of the provisions of the constitutional act or provision that was in play as the Supreme Court did in the In re. Advisory Opinion and in Studier and in all of those cases dealing with the interpretation of the Constitution. And the Court very clearly said that the common understanding of the terms in that provision require this outcome, so any other alternative would have been contrary to both the constitutional standard of review that the Supreme Court requires, and a different outcome would have been contrary to the very meaning and common understanding of that provision, so --

THE COURT: Well, but what --

MS. NELSON: I'm sorry. Go ahead.

THE COURT: What's the point of giving the people the right of referendum to reject a statute if the same Constitution is read to give the legislature the authority to reenact word for word the same statute that the voters just rejected? What's the point?

MS. NELSON: Well, the point is that that then becomes a political issue in and of itself, and do the people then want to continue to keep those legislators in office. That makes it a different question than the referendum of the actual law. That then makes it a political question and a question of political will, which I think is a different analysis than what is required here for purposes of our case.

THE COURT: Well, but why put the people to that?

MS. NELSON: Well --

THE COURT: The people spoke.

MS. NELSON: The people spoke in the context of Public Act 4. I will agree, and --

THE COURT: Okay. But the position you're arguing for is a much broader one, which is even if law number two is word for word the same as law number one, law two prevails --

MS. NELSON: That's what the case --

THE COURT: -- or it remains in effect.

MS. NELSON: That's correct. That's what the case law says, but I'm also pointing out that in this instance law number two --

THE COURT: Doesn't the --

MS. NELSON: -- is not word for word the same --

THE COURT: Okay.

MS. NELSON: -- and addresses --

THE COURT: Hold that argument for just a moment

because --

MS. NELSON: Sure.

THE COURT: -- I am interested in that, but where is the substance of the right of referendum that the Constitution gives the people if the legislature has the authority to thumb its nose at it like that?

MS. NELSON: Well, the right of referendum remains because the people could initiate a referendum with respect to the next bill. I know that's not --

THE COURT: To which the question remains why put the people to that?

MS. NELSON: It certainly does beg the question, your Honor, and that's why my response to you and the only response I think that's applicable is that it becomes a matter of political will, and there are other ways for the people to address that issue, and that is elect --

THE COURT: Well, they've already expressed their political will. Why do they have to do it twice, three times, an infinite number of times?

MS. NELSON: Well, that's -- because that's how the Court has interpreted that particular referendum.

THE COURT: This is the Court of Appeals, not the --

MS. NELSON: This is --

THE COURT: -- Michigan Supreme Court.

MS. NELSON: Yes, but leave to appeal was denied by

the Supreme Court. Now --

THE COURT: Means nothing.

MS. NELSON: It means nothing other than it wasn't interested in taking this particular issue at that particular time, so I'm referring the Court, yes, to a Court of Appeals decision, which is the last court decision on this particular issue. I'm not saying that I agree with that or that many -- that everybody agrees with it. I'm just simply saying that is the law, the most current law applicable on this particular issue. This is how the Court of Appeals has interpreted, and the Supreme Court allowed that interpretation to stand, and so this is the interpretation that has to be applied in the context of the argument raised by the Retired Detroit Police Members Association.

THE COURT: Am I bound by this decision?

MS. NELSON: I'm sorry. What?

THE COURT: Am I bound by this decision?

MS. NELSON: I believe that you are because it's the last highest court decision on this particular issue, and leave to appeal was denied by the Supreme Court.

THE COURT: What are the three or five most significant differences then between PA 4 and PA 436?

MS. NELSON: The first one is one that we've already discussed in terms of the transfer of authority to fund this proposition. The second one is -- the second most critical

one is the options that are made available to the local governments that didn't exist under 4 or 72. Public Act 436 creates four choices for the local governments once a determination of a financial emergency has been identified. They can choose either the appointment of an emergency manager, the negotiation of a consent decree. They can submit to neutral mediation, which, if unsuccessful, then they must proceed in Chapter 9, or they can opt to go right into Chapter 9, of course, with the approval of the governor. There are several options -- or changes within the context of the authority that's set out in Section 12(1) for the emergency manager, particularly with respect to the assets of the city and who has to be involved in the process in terms of if there's going to be a lease or sale of assets of over a certain value. I believe it's 50,000. The local officials have to be involved in that process as well. A third significant difference that didn't exist under either prior laws is the ability of the local government to present alternative plans, and an example is what's going on with Belle Isle. Under 436 the local government can object to or reject a proposal made by the emergency manager, and they have the opportunity to present an alternative plan. I believe it's to the emergency financial loan board. It's either to the emergency manager financial loan board or the treasurer -- an alternative proposal that could achieve the

same amount of savings, so they have the authority and the ability to object and present their own proposal for clarification.

Another significant change is the limitation on the term of the emergency manager. Under Public Act 436, the term is limited to 18 months. Additionally, another change is the fact that the local government may petition for removal of the emergency manager anytime before the expiration of that 18 months. So those are some of the more significant differences.

Another major -- excuse me. Another major difference is the creation of the transition advisory board that will participate with the local community or the local government once the emergency manager is -- emergency is deemed resolved and the emergency manager steps down, and that, for example, is a process that's taking place in Pontiac at the moment. The emergency manager there has stepped down, and so there are certain relationships that have been established to assist the local government with transition back into control of its financial operations and obligations. And one of the reasons for that was to address the criticisms that the emergency managers have never proved successful. Many of these communities, once the emergency manager steps down, find themselves within a year or two struggling again and back into the same circle, same process,

and so that's a very significant and substantial change as well.

Those are the some of the major highlights. There are a number of other ones in the process of how you initiate the financial review, the factors that are to be considered by the financial review team as they evaluate the cities. There are also some differences in terms of the authority of the emergency manager with respect to removing officials from office or appointing officials to take their place. That's been an issue in Detroit as well with respect to certain of the city council members. So there are some major -- but those are the major ones that come to my mind right off the top of my head.

THE COURT: If the Court rejects your arguments and holds that to the extent that PA 436 authorizes the appointment of an emergency manager that is unconstitutional, is there enough left of PA 436 for this bankruptcy to continue or not?

MS. NELSON: At this point, I don't believe there would be, your Honor, because the mechanisms or the way that the statute is designed right now, the emergency manager is acting on behalf of the city, and he is the one who made the recommendation, and he is the one that's specifically been approved. If you conclude --

THE COURT: Approved?

MS. NELSON: I'm sorry.

THE COURT: Approved for what?

MS. NELSON: Approved to file. The authorization was given to him to file, and he was doing it in the place and stead of the elected officials. So if the determination is that 436 is unconstitutional and his appointment, therefore, is void --

THE COURT: That was not exactly my hypo.

MS. NELSON: Okay.

THE COURT: My hypo was that holding that his appointment was unconstitutional or that so much of PA 436 that allowed the governor to appoint him was unconstitutional.

MS. NELSON: Well, first of all --

THE COURT: I mean I guess it's partially a severability question.

MS. NELSON: That's correct. There's a severability provision within 436 itself, and there's also a general severability question. And the first issue or the first question that would have to be decided is whatever you conclude -- whatever provisions you conclude to be unconstitutional, when they are severed, does that leave a substantial or significant amount of the Act in place so that it can be reasonably carried out. I would submit that if you conclude the appointment of the emergency manager is

unconstitutional, that goes right to the heart of the authority to proceed or the authorization to proceed in bankruptcy because he was acting on behalf of the city. If the appointment is deemed unconstitutional, then that would restore the local elected officials, the mayor and the council, as the representatives of the city, and they would have to then take the action to continue this bankruptcy.

THE COURT: I think your colleague represented the last time she was here in court -- and forgive me for not remembering her name. Who was it?

MS. NELSON: In what context? Michelle Brya?

THE COURT: A couple weeks back.

MS. NELSON: Is that who you might be thinking of?

THE COURT: Anyway, she --

MS. NELSON: Nicole Grimm.

THE COURT: -- referred to the statute, and there's a provision that authorizes the emergency manager to conduct the case.

MS. NELSON: Correct. That's Subsection 2. That's 18 -- Section 18, Subsection 2, which specifically authorizes -- once he receives the authorization from the governor, it specifically authorizes the emergency -- we're using "authorization" a lot or I am anyway --

THE COURT: Right.

MS. NELSON: -- but it specifically authorizes the

emergency manager to file the bankruptcy petition, so that's Subsection 2, so -- Section 18, Sub 2.

THE COURT: But it wasn't just file. It was file and conduct the case.

MS. NELSON: And conduct it. That's correct. And so if, in fact, he is removed from office by virtue of a ruling that his appointment was unconstitutional, that would necessarily terminate the case because it would revert back to the local officials, and they would then have to either reinitiate the process or somehow decide to continue the case without having -- if they could without reinitiating.

THE COURT: There's nothing else besides PA 436 that provides the necessary basis for authorization or consent for a municipality to be in bankruptcy?

MS. NELSON: Correct. Does the Court have any other questions?

THE COURT: No.

MS. NELSON: Thank you.

THE COURT: Thank you. Who's up next?

MR. BENNETT: I think our side. We relinquish our remaining time.

THE COURT: I did have a few questions for Mr. Troy. Stand by one second.

MR. TROY: Good morning, your Honor. Matthew Troy, Department of Justice, Civil Division, on behalf of the

United States. Your Honor, I want to clarify that we're on the same page with respect to the question that you had yesterday, which was, I think, how does the government respond to the objectors' reply regarding the ripeness issue. I went back last night and looked at what was filed on Friday by the various objectors. I think I found it, but I want to make sure we're talking about the same thing. I saw it in AFSCME's amended objection filed Friday wherein they talk about the harm that their members are suffering right now.

THE COURT: Right now, precisely.

MR. TROY: Okay. From the potential --

THE COURT: Ms. Ceccotti mentioned that in her argument yesterday as well.

MR. TROY: Okay. And, in fact, I mean I guess if I could read what I understood that Governor Snyder's authorization has itself unconstitutionally caused an immediate concrete injury to Council 25's members by creating a contingent liability that their inviolable rights will be disregarded causing them to reorder their financial affairs. It's articulated in different ways elsewhere in the brief, but I think that kind of encapsulates it.

THE COURT: Yes.

MR. TROY: I'll answer your Honor's question, but I do want to clarify one point before doing so. That contention, your Honor, is made in the context or in response

to the debtor's reply regarding the argument of whether or not there was proper authorization under 109(c)(2). That's not an argument made in the context of their constitutional challenge to Chapter 9, but I can see where it also falls over into that analysis.

THE COURT: Okay.

MR. TROY: But I want to make clear that on the 109(c)(2) issue the United States government is not taking a position on that issue.

THE COURT: Right.

MR. TROY: Okay. And that's where that argument arose, but I can see where your Honor thinks that has applicability to the constitutional challenge as well, and that's why I'll address that.

THE COURT: Well, I think we have to consider it and deal with it.

MR. TROY: Right. Your Honor, that articulation or that argument goes to whether or not they have standing. Is there a concrete actual injury? And when I read that description of the harm, the injury that they're suffering, to me, as a bankruptcy lawyer, that strikes me as a dynamic that occurs, frankly, every day in bankruptcy. A small business owner is faced with a debtor who wishes to assume and assign its lease or executory contract and says, "Consent or I'll reject it," or a nondebtor party that is faced with

the threat of a turnover action by a debtor in possession or trustee, and the nondebtor party says, "No, it's not property of the estate. It's held in a validly state law created trust or escrow account." Going back to my prior hypothetical, I left out that point as well saying the nondebtor party, small business owner, to the executory contract or lease says, "Wait a minute. I've got state law nonassignability rights. You can't do that." And the debtor says, "Yes, I can. Bankruptcy Code says I can." Preferential actions, your Honor, where seemingly innocent defendants are faced with a trustee or debtor in possession saying, "Pay or else I'm filing the action," particularly perhaps pointing at our seemingly innocent investors in what turns out to be a Ponzi scheme facing clawback suits. Some are less sympathetic than others, but there are some that are very sympathetic. They face the same dynamic that AFSCME poses here, and, unfortunately, that's just a dynamic that exists in bankruptcy.

THE COURT: Well, but to carry those hypos to the next step that may make it analogous here, couldn't any of those parties who you have identified file something in court asking for a court ruling sustaining their position, whatever it is, there was no preference, there was no fraudulent transfer, whatever their position is on the executory contract?

MR. TROY: That is true, your Honor, but that's an -- that's either an affirmative defense or an argument that the debtor or trustee has failed to satisfy one of the elements of even bringing the claim. That's not what's being posed here. What's being posed here is that the whole statute is unconstitutional, and for a party to come in and say that and to assert that, they have to meet a high hurdle, and that hurdle is in part -- some of the hurdles they have to meet -- and the two that are relevant here are standing and ripeness. And that hurdle, I would submit, is not met here with the argument that they have posed as being their injury in fact. It's a commonplace dynamic in bankruptcy. It's unfortunate -- and I'll take the objectors at their word, and it might very well have tragic consequences, but that's, unfortunately, what can happen in bankruptcy given the powers afforded a debtor.

THE COURT: Well, but I can hear the response now. The response is we retirees don't know what to do about our financial futures because of the uncertainty that this bankruptcy has created for us about the security of our retirement pensions. That uncertainty will be resolved or would be resolved if the Court were to take head on right now in the eligibility context the issue of whether this bankruptcy can impair pensions.

MR. TROY: And my response, your Honor, is that that

asserted injury in fact is not sufficient to vest them with standing to ask you to make that reach at this stage of the case.

THE COURT: Okay. So why not?

MR. TROY: Because it is -- what they're asking for is a significant remedy, which is the invalidation of the entire statute, at this stage of the case.

THE COURT: Right.

MR. TROY: To do that, they have to meet a much higher standard for their injury in fact.

THE COURT: So what's the -- what's, in your view, the most pertinent Supreme Court case that says that this kind of contingent concern, just to put a legal label on it, is insufficient?

MR. TROY: I don't have one to say that it is insufficient. I can explain to you why I think the one that they cite as evidencing it is inapplicable here.

THE COURT: Okay.

MR. TROY: I think they're principally relying on Clinton v. United States to say that this contingent liability is sufficient to constitute an injury in fact imbuing them with standing. My response, your Honor, is that that case is significantly different and distinguishable from this. In that case, your Honor, HHS went to the State of New York and its various municipalities, I guess, subsidiaries,

that administered Medicaid and said, "Look, you receive federal subsidies from us. You have to pay some of those back if you tax the healthcare providers providing those healthcare services." And so HHS issued a notice and demand to New York and said, "Pay. You've been imposing these taxes in the past. Those have to be reimbursed to us as basically a recoupment of the federal subsidies you've been receiving." They issued a demand saying pay.

THE COURT: Um-hmm.

MR. TROY: Well, some members in Congress, presumably from -- representing New York, said, "We don't like that so much, so we're going to put a section in the federal -- in the Balanced Budget Act of 1997 that says that liability is zapped out of existence." So New York and others then went and filed suit and said, "No, they can't do that." Ultimately the Court said, "No, you don't have standing. It hasn't happened yet." Then President Clinton actually exercised his line item veto power and excised that provision that said that liability is now zapped out of existence. The only reason it was contingent is because after the State of New York got the notice saying pay, they exercised apparently a valid right to request HHS to waive it, and HHS hadn't acted on it yet, but there was an explicit demand to pay from the federal government to the State of New York. It's not quite as contingent as what we're dealing

with here, your Honor, is my basic submission. There was an explicit demand to pay, and the ripeness -- or the standing, rather, was cured when President Clinton excised that specific section that had eliminated the liability. The liability rearose, and it was very real. The only thing that the City of New York, I guess, as the appellee in that case, had left was, well, we have a waiver request pending with HHS that hasn't been acted on, but HHS had already made the clear demand and said pay. That's why I think it's a different case than this, your Honor.

THE COURT: All right. One final question for you, and it goes to the issue of the constitutionality of Chapter 9, and it addresses some language in one of the commandeering cases, the New York case. There's some broad language in here that I think we have to deal with somehow, and so I'm asking for your help in how you think it should be dealt with. In that case, the Supreme Court said -- and I want to quote it to you. It's at 182. "The constitutional authority of Congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States." How do we reconcile that language with the constitutionality of Chapter 9?

MR. TROY: Because I don't -- I would submit that, as set forth in our brief, I think, that Chapter 9 does not

so narrowly proscribe the powers of the state, if I am recalling the quote correctly, your Honor. Chapter 9 --

THE COURT: Constitutional authority of Congress cannot be expanded by the consent of the governmental unit whose domain is thereby narrowed.

MR. TROY: I would submit, your Honor, that Chapter 9 does not -- it gives the states the consent to decide whether or not its municipalities can file Chapter 9 and under what terms and conditions, but I would submit also that, having done so -- having given states that right to consent, Chapter 9 does not then narrow impermissibly and unconstitutionally the state's sovereign powers to control and regulate its municipalities.

THE COURT: Well, but the objectors argue that it does because it imposes federal priorities on creditors that may be different from the priorities the state has.

MR. TROY: Right. And this all goes back, your Honor --

THE COURT: So its sovereign powers says we want priority scheme A, and, you know, the federal government has got its priority scheme B, so by filing bankruptcy, there's this narrowing of the state's sovereignty and this expansion of the federal government's sovereignty.

MR. TROY: Right. And, your Honor, I think this all goes back to the --

THE COURT: And New York says that can't be done by consent.

MR. TROY: Right. And I think all that is hinged upon and was subject to a lengthy colloquy between you and Mr. Bennett about Bekins or Bekins, take your pick, and Asbury Park. It's all -- that whole hypothetical that you're posing, your Honor, is -- again, it's dependent upon what did Asbury Park do and what did it imbue the states with.

THE COURT: Well, but what do I do with this language?

MR. TROY: Well, again, your Honor, that language -- I think when you then take that language and say, "Well, what about this hypothetical?" that hypothetical to me that you just posed raises the issue of why can't states then just impose their own municipal debt adjustment schemes because Asbury Park says we can, and --

THE COURT: Is the answer nothing more than if the state doesn't want to use the federal priority scheme, it just doesn't authorize bankruptcies?

MR. TROY: I think that might be --

THE COURT: Is that the answer to this?

MR. TROY: I think that might be the answer, yes, and that's the ultimate control that the state has. And that goes back to the language that Mr. Bennett was quoting from, I believe, Bekins and somewhat in a parallel sense in the

dissent from Ashton. It's the state's decision. It's the state's control. And as your Honor has pointed out in subsequent more recent cases involving Chapter 9, that's how the courts have viewed the issue. Once in, you're in.

THE COURT: All right. Thank you, sir.

MR. TROY: If I may, your Honor, if I just address one point --

THE COURT: Yes.

MR. TROY: There's standing, and there's ripeness. They're distinct, and they're different. Admittedly, if you look at the requirements for each, they arguably bleed into one another, but there is an element of ripeness here, your Honor, that I think is important for you to consider in determining whether or not to take up the objectors on their challenge to the constitutionality of Chapter 9, and it's principally judicial discretion, your Honor. Do you really have to do this now? Should you make this reach in declaring the statute that effectively has been upheld for 75 years and say it's unconstitutional right now at this stage of the proceeding? As articulated in our brief, we don't think you have to.

THE COURT: Well, since you raise standing, it was pointed out by one of the attorneys that under the Bankruptcy Code, creditors have standing to raise any issue that affects them in the bankruptcy. Does that provision in the

Bankruptcy Code answer the standing question? If not, why not?

MR. TROY: Because it's different than constitutional standing, which is what we're talking about here. We're talking about a constitutional standing to invalidate an entire statute.

THE COURT: Are the considerations on constitutional standing any different than the constitutional considerations on ripeness in any substantial way or significant way? Can you have one without the other?

MR. TROY: Can you have standing without --

THE COURT: Do they walk hand in hand down the same path?

MR. TROY: I'm sorry, your Honor. Are you referring to standing and ripeness?

THE COURT: That's what I meant, standing and ripeness.

MR. TROY: As I understand the doctrines, your Honor -- again, principally I'm a bankruptcy lawyer, not a constitutional lawyer, but as I understand the doctrines, your Honor, I would submit you could have one without the other. They are -- while similar, they are distinct. You could have standing but not have ripeness.

THE COURT: You argue neither here.

MR. TROY: Correct.

THE COURT: All right. I sense a certain eagerness on Mr. Bennett's part, so let's yield the lectern to him.

MR. TROY: Thank you, your Honor.

MR. BENNETT: Your Honor, I want to return to your question about whether or not the constitutional authority of Congress is being expanded here at all. From the very, very beginning of my argument we talked about why the Chapter 9 or the Chapter 9 -- whoops -- or the Chapter 9 equivalent from back in the '30s, what did not run afoul of the Tenth Amendment. And remember there was -- the first part of it was because there are -- uniform laws on the subject of bankruptcies are the domain of Congress, and the Supreme Court has told us that uniform laws on the subject of bankruptcies, as they apply to -- does apply to municipal credits.

THE COURT: Yeah. I get all that, and in the New York case the Congress was legislating within its commerce powers; right?

MR. BENNETT: But the problem with New York was it chose means; i.e., the only part that it didn't like was directing the states to buy or to take possession of nuclear waste. That was it. It was that part. It was the state's direction.

THE COURT: Well, okay. So do we read this language simply to say that the state cannot consent to a

Congressional enactment that goes beyond its commerce powers?

MR. BENNETT: I think --

THE COURT: If that's what they mean, that's sort --

MR. BENNETT: I think that the --

THE COURT: -- of like, "Well, duh."

MR. BENNETT: Well, that they can't consent to the -- also to the commandeering aspect of it. They can't consent to the direction to the states to do something the states can't be directed to do.

THE COURT: Okay. Pause there. If that commandeering in the statute were directed to a private party, would that have been within Congress' commerce power?

MR. BENNETT: It actually would have been because they talk about --

THE COURT: Okay.

MR. BENNETT: -- nuclear waste. And I also want to come back to the point, though, that --

THE COURT: But, okay, if that's true -- I have to pin this down with you.

MR. BENNETT: That's okay.

THE COURT: If that's true, what is the Court talking about in this language in New York when it says the constitutional authority of Congress cannot be expanded?

MR. BENNETT: That New York, by having participated in negotiations and been part of the group that pulled

together the statute at issue, can't have consented -- can't consent to the part that requires the state to buy nuclear waste, the part that was unconstitutional in the New York case.

THE COURT: Okay. But what authority -- what constitutional authority of Congress is being expanded by that?

MR. BENNETT: The Congress doesn't have the authority to direct the states to do things that it -- to buy things. It doesn't have that authority. That's the part that was the problem.

THE COURT: That's the Tenth Amendment --

MR. BENNETT: Correct.

THE COURT: -- limitation on the commerce power.

MR. BENNETT: Correct. But here I want to come back and say in the bankruptcy realm, because the Congress has the power to pass uniform laws on the subject of bankruptcies, because the subject of bankruptcies include municipal debt adjustment, of all the things that are clearly within Congress' power and is not an expansion, it's priorities when there's not enough to go around.

THE COURT: So your argument is that in order for this comment by the Supreme Court in New York to impact this case, the Court would have to find that the bankruptcy power of Congress does not include the power to include municipal

bankruptcies?

MR. BENNETT: Yes, your Honor.

THE COURT: Okay.

MR. BENNETT: Or that the subject of municipal -- the subject of bankruptcies does not include priorities.

THE COURT: Okay.

MR. BENNETT: And I would -- just to round out the answer to the rest of the points, there was also a recognition that Chapter 9 might creep up to the edges. That's where we have the 903 and 904 focus on governmental and political powers, and there there was a recognition that consent might not be enough. That's why we have 903 and 904 that people aren't requiring consent to too much.

MS. NELSON: Your Honor, may I just quickly make a brief statement to the Court?

THE COURT: Sure.

MS. NELSON: Margaret Nelson again on behalf of the state. I just wanted to let the Court know you requested yesterday that we file all of the Webster documents, and I just wanted to let you know that that likely will happen this afternoon or tomorrow morning --

THE COURT: Okay.

MS. NELSON: -- including all of the transcripts. I know I didn't discuss it during my oral, and I just wanted to ask the Court if it had any questions specific to the

collateral estoppel argument for the state.

THE COURT: No.

MS. NELSON: All right. Thank you.

THE COURT: All right. Mr. Gordon, may I have your attention, please? I had promised you and your colleagues on the objecting side here an opportunity before your rebuttal to organize. Would you like that opportunity now, or are you and your group prepared to proceed?

MR. GORDON: Your Honor, in that regard, a couple of things. One, in discussing these matters last night with the group on the objectors' side, it is the sort of universal view that there were issues that were raised and arguments that were made by Mr. Bennett yesterday that, frankly, weren't in the city's papers prior to yesterday. And in light of the importance of these issues, we would respectfully ask that there be perhaps an adjournment of the rebuttal argument and an opportunity to brief this with the idea that we would strive to coordinate so as to minimize the burden on the Court in terms of the amount of paper that gets filed and so forth, but it is our request in the first instance, your Honor, that there be essentially an adjournment of the rebuttal.

Also, as you can imagine, just trying to coordinate who would address what in rebuttal is something that was difficult to do at the end of a very long day yesterday, and

so there are some logistical issues, but, again, from a substantive standpoint, we were desirous of asking the Court if we could have two weeks to submit briefs on these issues and have rebuttal argument in the course of the --

THE COURT: Okay.

MR. GORDON: -- the Court's conducting of the evidentiary hearing at some point.

THE COURT: I fully intended to offer you the opportunity to file supplemental briefs, and that was just a question of how much time you needed, so for me that's not an issue. Much more problematic is the issue of adjourning the rebuttal arguments. Mr. Bennett, do you have a position on this?

MR. GORDON: And by the way, just for the record, I did at least reach out to Mr. Bennett last --

THE COURT: Um-hmm. Okay.

MR. GORDON: -- night about this, and he has his opinions, of course.

THE COURT: That was very civil and courteous of you.

MR. GORDON: Thank you. I try.

THE COURT: Yes, you do.

MR. BENNETT: Yes. That's true. I did receive this -- the notice of the possibility that this request would be made. First of all, we did not cite any new cases. We

certainly read cases that they had cited perhaps more closely than they did, and that was all within the fair game of the party who speaks not having filed the last set of papers. The last set of papers were, of course, filed by the objectors, so there's been no impropriety, nothing unfair, nothing unusual. And the fact that they had overnight to prepare is a courtesy that, quite frankly, I don't always get when I have to deal with an oral argument after full sets of papers.

Adjourning the hearing will create another time burden and expense. We're getting enough complaints in the press about how much this case is costing. I'm prepared and the city has invested in that preparation, and we're ready to go. If we put this off, we're going to get to do that all over again. The request for two weeks, quite frankly, may well be okay depending upon the length of the trial, but we would need an opportunity to respond, and that would push the response beyond the trial. And we have business we need to conduct. We have a DIP financing that we're going to need to get approved, and that won't fund until there's a determination on eligibility. So there's all kinds of calendar difficulties if your Honor chooses to adjourn, and, frankly, there's calendar difficulties if we have to do another set of briefs. The ultimate objective is to give your Honor the help you need to decide, and so with the

understanding that there will be incremental additional expense if there's an adjournment -- and we're ready to go today -- I believe there's nothing unfair about that -- it's ultimately what works for you, and we'll accommodate whatever your Honor decides. I have no problem with a short break if people want to get organized. That's perfectly okay obviously.

THE COURT: All right. Stand by one moment, please. All right. Mr. Gordon, may I have your attention again, please? In the circumstances, I can't justify putting off rebuttal for any substantial period of time. I can offer you the choice of proceeding after lunch at one o'clock today or proceeding this Friday. We do have another motion hearing on an unrelated matter at ten, and we could go in this matter at 11 on Friday.

MR. BENNETT: Your Honor, I'm not available. I'm not available on Friday. It's mid-semester break for one of my sons, and I'm planning to be away this weekend, including Friday.

THE COURT: Well, hold on one more second.

MR. GORDON: Your Honor, I can perhaps short-circuit the issue. I think, from what I'm hearing, we're comfortable then under the circumstances with coming back at one o'clock today and presenting our rebuttal.

THE COURT: Your other choice would be to do this on

Monday either before or after or as part of the pretrial conference that's scheduled for that date. Do you have any objection to that?

MR. BENNETT: I'll have to take a red-eye unless it starts really late like at about -- I can make a 3:30, I think.

THE COURT: I can't do that myself.

MR. BENNETT: Look, I'll take a red-eye.

THE COURT: I have to be done by three.

MR. BENNETT: I'll take a red-eye, and someone will nudge me if I fall asleep. As long as it's in the afternoon, it's okay.

THE COURT: Well, hopefully their arguments will not have that impact on you.

MR. BENNETT: Okay. If it's in the afternoon, it'll work. It'll be okay.

THE COURT: Okay. If I understand our time constraints correctly, there's an hour on each side left, right, for rebuttals? So if we start at one, then I can leave by three, which is what I need to do. Does that help you?

MR. BENNETT: I'll make it work.

THE COURT: So you were not going to be at the pretrial conference at ten.

MR. BENNETT: That's correct.

THE COURT: Somebody else was covering that for you. That's fine with me, one o'clock Monday for the rebuttal arguments. Did you want to say something? Go ahead.

MS. CECCOTTI: Yes. One o'clock is fine actually. That's helpful to me. I wonder, though, in terms of the pretrial, I was actually going to ask as a housekeeping matter, again, just due to flights and so forth, it may not be one of my team, but if we had some -- a UAW designee, would that be sufficient, a lawyer for our side here? Otherwise --

THE COURT: That's up to you.

MS. CECCOTTI: Okay. You don't --

THE COURT: No.

MS. CECCOTTI: I just wondered if the Court had any --

THE COURT: I mean generally speaking, we want at the final pretrial conference whoever is going to conduct the trial.

MS. CECCOTTI: Yeah.

THE COURT: Is that -- is there that disconnect for you?

MS. CECCOTTI: There is. There are four lawyers on my side and all handling different aspects --

THE COURT: Um-hmm.

MS. CECCOTTI: -- so -- and they're all busy.

THE COURT: Well, all right. So long as the person is familiar enough, you know, to conduct the sort of administrative stuff we do at a final pretrial conference, including dealing with exhibits, that's fine.

MS. CECCOTTI: I see. Okay. All right. That's helpful, your Honor. We'll be --

THE COURT: All right.

MS. CECCOTTI: -- guided accordingly.

THE COURT: All right. So -- all right. I guess the point is we're adjourning for today to reconvene in this matter at one o'clock on Monday for the final two hours.

MR. TROY: Apologies, your Honor. Matthew Troy again. I'm not sure if my presence here was helpful or not, but I will not be here on Monday --

THE COURT: That's fine.

MR. TROY: -- unless you request it or ask of it, and then --

THE COURT: But please accept my assurance that your appearance here today and your argument was helpful.

MR. TROY: Thank you, your Honor. If your Honor wants me here for that hearing, I can start making inquiries.

THE COURT: You know, if that arises, we do have the option of a telephonic appearance as well.

MR. TROY: Okay.

THE COURT: In fact, you have that option regardless

to listen in, so, you know, in terms of whether you, on behalf of your client, feel the need to make any further oral argument, I leave that to your discretion. And if you want to, we'll do it by telephone.

MR. TROY: Thank you, your Honor.

THE COURT: Just let us know in advance.

MR. TROY: Yes, sir.

THE COURT: All right. Anything further for today, anyone? No. All right. That's it then.

THE CLERK: All rise. Court is adjourned.

(Proceedings concluded at 4:21 p.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett October 20, 2013

Lois Garrett